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MAXIMUM AVAILABILITY LIMITED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAXIMUM AVAILABILITY LIMITED, a
New Zealand limited liability company

Plaintiff,

v.

VISION SOLUTIONS, INC., a Delaware
corporation; WILLIAM HAMMOND, an
Individual

Defendants.

CASE No. CV-09-5745-CRB

**EX PARTE APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND AN ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION**

**[SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATIONS OF ALLAN
CAMPBELL AND HEATHER JONES
FILED SEPARATELY]**

Date: TBA
Time: TBA
Judge: Hon. Charles R. Breyer

Complaint Filed: December 7, 2009

1 TO THE HONORABLE CHARLES R. BREYER, ALL PARTIES AND THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT Plaintiff MAXIMUM AVAILABILITY LTD.
4 (“Plaintiff” or “MAXIMUM”) hereby applies *ex parte* for a temporary restraining order seeking
5 to immediately stop Defendants VISION SOLUTIONS, INC. (“VISION”) and WILLIAM
6 HAMMOND (“HAMMOND”) (collectively, “Defendants”) from further distributing numerous
7 false and misleading comparative marketing materials about Plaintiff’s products and services, and
8 in particular, orders that:

- 9 (1) Defendant VISION and its officers, agents, servants, employees, attorneys, successors,
10 assigns, and all others in active concert or participation with VISION, shall immediately
11 cease distribution of the allegedly false and/or misleading statements reflected in the
12 exhibits and materials submitted for this Court’s consideration, or any part thereof, in
13 whatever format, including verbal;
- 14 (2) Within five (5) business days of the effective date of the Order, VISION shall disclose
15 to Plaintiff a list of all third parties who received any of the allegedly false or
16 misleading statements in any form, either written or oral, which such list shall include
17 the full details (including names and contact details) of each person or entity who
18 received any of the false and/or misleading statements in any format orally or in
19 writing;
- 20 (3) Within ten (10) business days of the effective date of the Order, VISION shall deliver
21 all infringing marketing and advertising materials (such as marketing, promotional
22 materials, labels, electronic files including product presentations, etc.) in whatever
23 medium to MAXIMUM along with an affidavit from VISION confirming, under oath,
24 that all copies of any infringing material have been recovered and delivered to
25 MAXIMUM, and that all recipients have been disclosed; and
- 26 (4) Within ten (10) business days of the effective date of the Order, VISION shall distribute
27 corrective marketing statements in a form prepared by, or authorized by, MAXIMUM,
28 to all recipients of the information confirming that the information relating to noMAX is

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incorrect and must be destroyed/deleted, and confirmation of delivery provided to
MAXIMUM.

Plaintiff also requests that the Court issue an order for Defendants to show cause, if any
they have, as to why a preliminary injunction should not issue enjoining all such false advertising
during the pendency of this action.

This application is based upon Sections 34(a) and 43(a) of Lanham Act, 15 U.S.C. §
1125(a), and California Business and Professions Code § 17500, *et seq.*, which authorize the
issuance of temporary restraining orders and preliminary injunctions to enjoin false and
misleading advertising, and the fact that Defendant HAMMOND authored and Defendant
VISION has been disseminating at least two documents (and possibly more) that contain
numerous false and misleading statements about Plaintiff and its products and services in the
guise of comparative advertisements.

Plaintiff further requests, respectfully, that the Court set the hearing date on the OSC re
Preliminary Injunction to proceed on February 19, 2010 at 10:00 a.m., which is the same date and
time currently scheduled for this Court to hear and consider the Defendant's respective motions
to dismiss and/or transfer venue of this action. Plaintiff proposes that Defendants should file
their Opposition papers to the OSC re Preliminary Injunction on or before February 4, 2010, and
that Plaintiff shall file its Reply papers on February 12, 2010.

This Application is made on the ground that immediate and irreparable injury will result
to Plaintiff unless Defendants' unlawful false advertising is enjoined pending trial. The
Application will be based upon the notice contained in this Application, the attached
Memorandum of Points and Authorities, the Declarations of Allan Campbell and Heather Jones,
which are being filed concurrently herewith, and such other evidence and arguments that may be
submitted to the Court at the time of or before this matter is heard.

DATED: January 27, 2010

MBV LAW LLP

By /s/ Micah R. Jacobs

MICAH R. JACOBS

Attorneys for Plaintiff

MAXIMUM AVAILABILITY LIMITED